

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.1801 OF 2004

IN

SUIT NO.2681 OF 2001

Standard Chartered
Grindlays Bank ..Plaintiff

Vs.

Mrs.Vidya M.Kulkarni
& Anr. ..Defendants

And

The Court Receiver ..Respondent.

Ms.N.Pandya i/b.Mashesh Menon & Co. for the
Plaintiff.

Mr.P.G.Lad, Advocate for Defendant No.2 in support
of the Chamber Summons.

**CORAM: S.U.KAMDAR, J.
DATED: 20TH DECEMBER, 2004**

P.C. :

The present suit is filed inter-alia for a decree for a sum of Rs.4,37,659/- and, under prayer clause (b) of the plaint it has been pleaded that the said amount is duly covered by a mortgage in respect of an immoveable property described in Exhibit "E" to the plaint. This claim arises out of a mortgage deed in favour of the Defendant. Exhibit "D" describes the property as immoveable property situated at Pune.

2. However, in paragraph 18 of the plaint the Plaintiff has sought a leave under clause XII of the letters patent on the basis of the cause of action arisen within the jurisdiction of Bombay. The said paragraph reads as under :

The aforesaid facility was granted by the Plaintiff to said Defendants at Mumbai. The loan application was submitted at Mumbai. The monies in respect of the said Banking facilities were due and payable at Mumbai. The equitable Mortgage was created by the Defendant No.1 of immovable property as per Exhibit "E" is situated at Pune. Hence, part of cause of action has arisen in Mumbai. Hence Clause XII leave under the Letters Patent of this Hon'ble Court being granted & this Hon'ble Court has jurisdiction to entertain and try the present suit."

3. Under clause XII of the Letters Patent, there are two kinds of suits which are prescribed in which a leave can be granted in a case where suit is for a land or the other immoveable property, the jurisdiction will be where the land or the property is situated. If the land or the property is situated partly within the jurisdiction of Bombay and partly outside Bombay, then leave under clause XII is permissible. In the present case, the property which is the subject matter is situated at

Pune. It is a settled law that the suit for the sale of a mortgage property is concerned it is to be treated as a suit for land. It is so held in *Kanti Chunder v. Kissory Mohun Roy* (1892) 19 Calcutta, 361, *Hongkong and Shanghai Banking Corporation v. Official Assignee of Calcutta* (1959) A.C. 616, *Hari Ram v. Rameshwarlal*, 1946(2) Calcutta, 63.

4. The present Chamber Summons No.1801 of 2004 has been taken out for revocation of leave under clause XII. The relevant averments pertaining to the cause of action has been set out in paragraph 2 to the affidavit in reply. The paragraph 2 of the affidavit in support reads as under :

"2. I say that the Plaintiff has filed the suit in this Hon'ble Court even though the entire transaction was taken place at Pune, beyond the territorial jurisdiction of this Hon'ble Court. I say that the plaintiff has obtained Leave under Clause XII by making false statement in the application for Leave under Clause XII and in paragraph No.18 of the plaint. I say that the Defendants have submitted application for loan to ANZ Grindlays Bank at its branch at Mhatre Bridge, Erandvana, Pune. I say that the application for loan was processed by the said branch. I say that the said branch has communicated to the Defendants of the sanction of loan at Defendants' address at Pune by letter dated 20th November, 1998 as per Exhibit B to the plaint. I

say that the Demand Promissory Note at Exhibit "C" to the plaint was executed at Pune on 23rd November, 1998. I say that the Irrevocable Power of Attorney was executed by the Defendants in favour of ANZ Grindlays Bank at Pune as per Exhibit "D" to the plaint. I say that the Defendants are residing at Pune. The charge in respect of the Defendants' premises located at Pune was created at Pune. I say that the Defendants have given cheques for repayment of the instalments of loan drawn on their bank viz. Bhagini Nivedita Bank having its branch at Nigdi, Pune. All the cheques were cleared by ANZ Grindlays Bank at Pune. No transaction has taken place in Mumbai. In spite of the said fact the Plaintiff has filed the above suit in this Hon'ble Court by making false statement in paragraph 18 of the plaint and obtained Leave under Clause XII of the Letters Patent Act by making false statement. Hence the leave granted on 29.3.2001 is liable to be revoked."

5. However, the learned counsel appearing on behalf of the Plaintiff strongly contended that in view of the fact that the payments are to be made at Bombay, this Court shall have the jurisdiction. In my view, the argument is wholly misconceive and the reliance placed on the judgment in the case of *State of Punjab v. A.K.Raha (Engineers) Ltd.*, reported in *AIR 1964 Calcutta, 418* is also equally misconceived. In my view, the suit is for the land the entire immoveable property is situated outside the jurisdiction of this Court and this Court has no

jurisdiction at all to entertain the suit even after granting the leave under Clause XII.

6. The learned counsel for the Plaintiff has also contended that the suit was filed in the year 2001 and the application is taken out in the year 2004 and, therefore, this Court should not exercise jurisdiction for revocation leave and the issue will have to be determined at the final hearing of the suit. I do not find any substance in this submission be alone the issue of jurisdiction has to be entertained and decided at the earlier stage possible and, therefore, the same is rejected.

7. In view thereof, leave granted earlier is hereby revoked. Chamber Summons is made absolute in terms of prayer clause (a). The suit stands dismissed. There shall be no order as to costs.